

BOISE, FRIDAY, JUNE 6, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

BLACK LABRADOR INVESTING, LLC,)

Petitioner-Respondent,

V.

KUNA CITY COUNCIL and the CITY OF KUNA, IDAHO, a political subdivision of the State of Idaho,

Respondents-Appellants.)

Docket No. 34513

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Honorable D. Duff McKee, District Judge.

Grove Legal Services, Nampa, for appellants.

Real Estate Law Group, Eagle, for respondent.

This appeal arises from a petition for judicial review of a denial of an application for annexation by the Kuna City Council (the Council) submitted by Black Labrador Investing, LLC (Black Labrador). Appellant City of Kuna (the City) appeals the district court’s decision reversing and remanding the case to the Council for further proceedings. Black Labrador owns a 1.79 acre lot adjacent to the City in Ada County. Black Labrador planned to subdivide the lot into three separate lots and build one single-family home on each lot. Although the property had access to City water service, sewer lines were located about a mile away. After annexation, Black Labrador planned to connect the houses to City water service and use septic tanks instead of connecting the houses to City sewer service. Black Labrador planned on using an existing septic system located on the property and installing two separate nitrate-reducing septic systems to accommodate all three houses. Black Labrador also planned on installing “dry lines,” so the houses could be connected to City sewer service once the sewer lines were made available.

The City Planning and Zoning Commission found that the annexation and lot split complied with City Code, the City Comprehensive Plan and I.C. § 50-222. The Council was scheduled to consider Black Labrador's annexation on November 21, 2006. However, the Planning and Zoning Commission asked that the Council table the matter until the December 5, 2006 meeting. During the November 21, 2006 meeting, the Planning and Zoning Director did discuss with the Council a matter similar to Black

Labrador's proposed annexation involving septic tanks. The Council did not discuss Black Labrador's application for annexation.

At the December 5, 2006 Council hearing, the Council indicated that it was concerned with the level of nitrates and phosphates the septic tanks would discharge. The Council was also concerned that the owners of the houses would be unwilling to pay the sewer connection fees once sewer service was available to the houses. Accordingly, the Council denied Black Labrador's application for annexation.

Black Labrador filed a Petition for Judicial Review with the district court on December 7, 2006, asking the district court to set aside the decision of the Council and issue an Order approving the annexation and lot split. The district court reversed and remanded the case to the Council for further proceedings. On appeal, Black Labrador argues that the City did not act in accordance with I.C. § 67-6535 because the City denied its application without relying upon standards and criteria set forth in the comprehensive plan and City ordinances. Black Labrador also argues that the City violated its due process rights and that it is entitled to redress under the Idaho Administrative Procedure Act. The City argues that the Council's decision is not subject to judicial review and the appeal should be dismissed for lack of jurisdiction.

BOISE, FRIDAY, JUNE 6, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

BERNETA DELUNA,

Plaintiff-Appellant,

V.

**STATE FARM FIRE AND CASUALTY
COMPANY,**

Defendant-Respondent.

Docket No. 34202

Appeal from the District Court of the First Judicial District of the State of Idaho,
Kootenai County. Hon. Lansing L. Haynes, District Judge.

Paine Hamblen LLP, Coeur d'Alene, for appellant.

Elam & Burke, P.A., Boise, for respondent.

Berneta Deluna brought this action against State Farm Fire and Casualty Company (“State Farm”) to collect a judgment she received against Stuart Kramsky, one of State Farm’s insureds. On cross-motions for summary judgment, the district court held State Farm breached its duty to defend Kramsky. However, the court awarded no damages to Deluna, ruling that State Farm did not have a duty to indemnify Kramsky because Deluna’s judgment was not covered by Kramsky’s policy. She appealed to this Court.

BOISE, FRIDAY, JUNE 6, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

JASON C. SMITH,

Petitioner-Appellant,

V.

STATE OF IDAHO,

Respondent.

Docket No. 33254

Appeal from the Fifth Judicial District of the State of Idaho, Twin Falls County. Hon. John C. Hornhorst, District Judge.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

Jason Smith was incarcerated for the 1998 rape of a fifteen-year-old girl, in violation of I.C. § 18-6101(1). Prior to his release, he was referred to the Sexual Offender Classification Board (the Board) under I.C. § 18-8314(2) to determine whether he should be classified as a violent sexual predator (VSP). The Board classified Smith as a VSP, and notified him of their decision. Smith appealed that decision to the district court, Honorable John C. Hohnhorst presiding. The district court held an evidentiary hearing, and in a memorandum decision upheld the Board's decision, finding that the classification was supported by a preponderance of the evidence. On appeal Smith challenges the constitutionality of the statute and the effectiveness of his counsel at the district court level. Smith also alleges that this Court violated his right to due process by refusing to un-seal the Board's records for review by appellate counsel.